INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	2
Statement	3
Argument	5
Conclusion	14

CITATIONS

Cases:

Abraham v. *Ordway*, 158 U. S. 416	11
Arjona v. *Winship*, 49 P. R. R. 50	7
Barber v. *City of Evanston*, 297 Ill. App. 396, 17 N. E. 2d 722	7
Bengzon v. *Secretary of Justice*, 299 U. S. 410	9, 11
Buell v. *Jefferson County Court*, 175 Or. 402	12
City of Paducah v. *Gillispie*, 273 Ky. 101	12
Commonwealth v. *Barnett*, 55 L. R. A. 882	8
Commonwealth v. *Barnett*, 199 Pa. 161	8, 10
Commonwealth v. *Bralley*, 69 Mass. 456	7
De Castro v. *Board of Commissioners*, 322 U. S. 451	11
De la Rosa v. *Winship*, 47 P. R. R. 312	4, 6, 7, 9, 12
Fergus v. *Russel*, 270 Ill. 304	8
Fitzsimmons v. *Leon*, 141 F. 2d 886	7, 12
Folmar v. *Brantley*, 238 Ala. 681	12
Great Western Telegraph Co. v. *Purdy*, 162 U. S. 329	11
Leon Parra v. *Fitzsimmons*, 61 P. R. R. 340	6, 7
People v. *Chicago Park District*, 296 Ill. App. 365, certiorari denied, 308 U. S. 575	13
Ponsa Pares v. *Winship*, 53 P. R. R. 871	7
Sancho Bonet v. *Texas Co.*, 308 U. S. 463	11
Soto v. *McLeod*, 56 P. R. R. 775	7
State v. *Forsyth*, 21 Wyo. 359	10
State v. *Witter*, 114 Ohio St. 357	13
Stong v. *People*, 74 Colo. 283	8
Terrao v. *Cordero* 67 P. R. R. (not yet officially translated in English)	6
Ugarte v *MacLeod*, 56 P. R. R. 809	7
United States ex rel. Arant v. *Lane*, 249 U. S. 367	12
Wheeling Bridge & Terminal Ry. v. *Reymann Brewing Co.*, 90 Fed. 189	11
Wood v. *Riley*, 192 Cal. 293	11

Statutes:

Cal. Const.:

Page

Art. IV, § 34 10

Mass. Const. Amend. LXIII:

§ 5 10

Organic Act of Puerto Rico (Act of March 2, 1917, 39 Stat. 951, 961, 48 U. S. C. 825):

Section 34 ..... 2, 3, 5, 7

Act of July 3, 1950, P.L. 600, 81st Cong., — Sess. 11

Miscellaneous:

54 Cong. Rec. 2256 9

Rule No. 39 of the Court of Appeals for the First Circuit 4

Rule No. 39(b) of the Court of Appeals for the First Circuit 11

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 135

PEDRO BLANCH, ET AL., PETITIONERS

v.

RAFAEL DE J. CORDERO, AUDITOR OF PUERTO RICO AND RAFAEL BUSCAGLIA, TREASURER OF PUERTO RICO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the Judicial District of San Juan, Puerto Rico (R. 20-24) is not officially reported in English. The opinion of the Supreme Court of Puerto Rico (R. 27-30) is not yet officially reported in English. The opinion of the United States Court of Appeals for the First Circuit (R. 45-48) is reported at 180 F. 2d 856.

JURISDICTION

The judgment of the Court of Appeals was entered on March 22, 1950 (R. 49). The petition for a writ of certiorari was filed on June 17, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether Section 34 of the Organic Act of Puerto Rico vests authority in the Governor of Puerto Rico to object to portions of items in a general appropriation bill and thereby to reduce the salaries of officers and employees of the Government of Puerto Rico fixed by the Legislature in such a bill.

2. Whether the court of appeals erred in refusing to set aside as "inescapably wrong" or "patently erroneous" the conclusion of the two Puerto Rican courts that this suit is barred by laches.

STATUTE INVOLVED

Section 34 of the Organic Act of Puerto Rico (Act of March 2, 1917, 39 Stat. 951, 961, 48 U. S. C. 825) provides in pertinent part:

> If any bill presented to the governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving of the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items, parts or portions thereof to which he objects, and the appropriation so objected to shall not take effect.

STATEMENT

On June 16, 1947, petitioners filed a petition for writ of mandamus against respondents, the Treasurer and Auditor of Puerto Rico, in the District Court for the Judicial District of San Juan (R. 1-18). In the complaint, petitioners alleged that on July 1, 1932, they had been officers and employees of the People of Puerto Rico, and that their salaries had been specified in the budget enacted by the Legislature of Puerto Rico for the fiscal year beginning July 1, 1932 (R. 2). Upon receiving the appropriation bill as passed by the Legislature, the Governor reduced each petitioner's salary by the amount set out in an appendix to the complaint (R. 2, 5-18). The Governor, petitioners claimed, had no legal authority under Section 34 of the Organic Act so to reduce their salaries, and hence, by so acting, "the Governor annulled each and every one of such items or salaries, which resulted in leaving the Government of Puerto Rico without the necessary appropriations for its support during the fiscal year 1932-33" (R. 2). Accordingly, petitioners claimed that their salaries should have been paid pursuant to the appropriation law for the prior fiscal year (R. 2-3).[1] They stated that their delay in bringing this action was "due to the fact that they have considered barred out, heretofore, their right to the claim herein

[1] Section 34 of the Organic Act also provides (48 U. S. C. 826):

> If at the termination of any fiscal year the appropriations necessary for the support of the government for the

made, because of two standing decisions of the Supreme Court of Puerto Rico" (R. 3-4), and prayed that the Auditor and Treasurer of Puerto Rico be ordered "to issue the pertinent warrants in [petitioners'] favor" and to pay the sums of money deducted from their salaries during the fiscal year 1932-33 (R. 4).[2]

After respondents filed their answer (R. 18-20), the District Court dismissed the complaint (R. 25). In its opinion, the court, relying particularly on the holding of the Supreme Court of Puerto Rico in *De la Rosa* v. *Winship,* 47 P. R. R. 312, held that "the Governor of Puerto Rico acted legally in making the deductions in the salaries of the [petitioners]" (R. 22). The court further held that petitioners' claim was barred by laches;

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ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be applicable, shall be deemed to be reappropriated item by item * * *.

[2] As a second cause of action, petitioners alleged that the Legislature "not having enacted any budget bill in the year 1931 to be in force during the fiscal year 1932-33, as it was its constitutional duty to perform, the budget bill enacted and approved in 1932 was made without any constitutional authority and * * * is * * *, in the judgment of plaintiffs, void" (R. 3). The District Court (R. 23) and the Supreme Court of Puerto Rico (R. 28-30) rejected this claim, as they did petitioners' other contentions. In their motion for reconsideration petitioners conceded the soundness of the Puerto Rican courts' holding on this point (R. 35). No assignment of error or argument thereto was made by petitioners (see R. 40-41) and, consequently, no question in regard to this claim was before the court below. See Rule No. 39 of the Court of Appeals for the First Circuit. The Court of Appeals stated that this contention "has been abandoned on this appeal" (R. 46, fn. 1).

it considered petitioners' delay of almost fifteen years as "entirely inexcusable", and noted that if their claim had been sound the delay "would have been very prejudicial to the interests of the People of Puerto Rico" (R. 24). The Supreme Court of Puerto Rico unanimously affirmed on both grounds (R. 27-30). On appeal, the court below categorically rejected petitioners' contention that Section 34 did not authorize the Governor to reduce items in an appropriation bill (R. 47). It also refused to set aside as "inescapably wrong" or "patently erroneous" the conclusion of the Puerto Rican courts on the local law question of laches (R. 48).

ARGUMENT

1. (a) Petitioners urge, on the basis of a detailed grammatical and dictionary analysis of the language employed, that the word "thereof" in Section 34 of the Organic Act of Puerto Rico (*supra*, p. 2) refers back to the singular "bill" rather than the plural "items", and, consequently, they contend, that that Section authorizes the Governor of Puerto Rico to object not to parts or portions of items in an appropriation bill but only to entire items (Pet. 9-21). In effect, petitioners claim that Section 34 should be construed as if it read (see Pet. 10):

> If any bill presented to the governor contains several items of appropriation of money, he may object to one or more of such items or

> any part or parts, portion or portions *of the bill,* while approving of the other portion of the bill.

The categorical rejection by the court below of this contention was plainly correct. Petitioners conceded below (R. 48) that Section 34, read in a normal manner, vests authority in the Governor to reduce items of appropriations, including salaries of governmental officers and employees fixed by general appropriation bills. The Supreme Court of Puerto Rico has, at least since 1934, so read the statute. In *De la Rosa* v. *Winship,* 47 P. R. R. 312, that court rejected the very argument here urged by petitioners, with the comment (47 P. R. R. 313-314):

> When the meaning of words used in a statute is perfectly plain, effect should be given to that meaning even under the rule of strict construction which, where a grant of power is involved, is applicable only in case of doubt as to what the legislature intended. When Congress said that the Governor "may object to one or more of such items, or any part or parts, portion or portions thereof" it meant, we think, that "he may object to one or more of such items, or any part or parts, portion or portions" of such items.

That Court subsequently followed this reading of Section 34, in accordance with its plain language, in *Leon Parra* v. *Fitzsimmons,* 61 P. R. R. 340, and *Terrao* v. *Cordero,* 67 P. R. R. (not yet officially

translated in English); cf. *Arjona* v. *Winship,* 49 P. R. R. 50; *Ponsa Pares* v. *Winship,* 53 P. R. R. 871; *Ugarte* v. *MacLeod,* 56 P. R. R. 809; *Soto* v. *MacLeod,* 56 P. R. R. 775. Despite petitioners' statement (Pet. 27), the Puerto Rican Supreme Court in the *Leon* case expressly affirmed its *De la Rosa* holding with the note that in the *De la Rosa* case "the matter was given most careful consideration" (61 P. R. R., at 344), and in affirming the *Leon* decision, the Court of Appeals for the First Circuit stated in regard to the language of Section 34 here involved that "the intention of Congress to empower the Governor to scale down as well as disapprove items in appropriation bills is clear." *Fitzsimmons* v. *Leon,* 141 F. 2d 886, 888. The Court of Appeals' decision in the instant case merely adopts as holding its prior *dictum* in the *Leon* case (R. 47).

Moreover, there is no grammatical or legal obstacle to "thereof" 's having a plural, rather than a singular, antecedent. In *Commonwealth* v. *Bralley,* 69 Mass. 456, the word "thereof" was found to refer to "spirituous or intoxicating liquors." See also *Barber* v. *City of Evanston,* 297 Ill. App. 396, 17 N. E. 2d 722, where the antecedent was clearly plural. The congressional intent that "thereof" refer back to "items" is clear from the succeeding sentence of Section 34. The structure of that sentence, which provides "In such case [where the Governor objects] he shall append to

the bill, at the time of signing it, a statement of the *items, parts or portions thereof,* to which he objects" (italics supplied), leaves no room for doubt that "thereof" refers to "items" as its antecedent.

Construing Section 34 to authorize the Governor of Puerto Rico to veto parts of items in appropriation bills also conforms with the provision's legislative history. As pointed out in a note to *Commonwealth* v. *Barnett,* 55 L. R. A. 882, 885, many states have constitutional provisions permitting the Governor to veto "any item or items" of an appropriation bill or "one or more of such items" or "one or more items". These provisions have been construed by the majority of state courts to enable the Governor to object only to entire items of an appropriation bill (see, *c.g., Stong* v. *People,* 74 Colo. 283; *Fergus* v. *Russel,* 270 Ill. 304), although a few courts have held that the Governor, in addition, could reduce the items. *E.g., Commonwealth* v. *Barnett,* 199 Pa. 161. Originally, the proposed Organic Act followed the language of these state constitutional provisions by providing that the Governor of Puerto Rico could veto "one or more of such items" of an appropriation bill. This pattern was departed from, however, by the adoption of an amendment, proposed on the floor of the Senate by the Senate Committee on the Pacific Islands and Porto Rico, which inserted the phrase "or any part or parts, portion or portions thereof" after the word "items" in the first sentence

of Section 34, and the phrase "parts or portions thereof" after "items" in the second sentence. 54 Cong. Rec. 2256. Although no discussion accompanied the amendment, it seems clear that by so inserting these phrases Congress did not intend merely to add meaningless and redundant verbiage to the statute, which would be the effect under petitioners' construction, but rather sought to avoid the constructional difficulties experienced under the various state provisions and to make it clear that the Governor was authorized to reduce the individual items in an appropriation bill.[3]

(b) There is no merit to petitioners' further contentions, assertedly based on *Bengzon* v. *Secretary of Justice,* 299 U. S. 410, that the action of the Governor in reducing items of an appropriation bill is "affirmative legislation by executive edict,"[4] and that such a power in the Executive would violate

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[3] As explained by the Supreme Court of Puerto Rico in the *De la Rosa* case (47 P. R. R. at 315):

> Congress was aware of the stereotyped phraseology of the state constitutions and of the interpretation placed thereon by the state courts. Instead of following any of these precedents it elected to establish an unmistakable innovation and in its choice of words left but little to the imagination.

[4] This phrase was used by this Court in the *Bengzon* case (299 U. S. at 414) with reference to a veto by the Executive of Sections of a bill passed by the Philippine Legislature which the Court held dealt with general legislation and was not an appropriation bill (299 U. S. at 414). The Court further held that even if the bill could be characterized as an appropriation bill, the particular section which the Governor-General of the Philippines had sought to veto was not an appropriation item, but a general provision of law

"the basic principles of American Constitutional Law," since it allegedly results in an improper encroachment by the Executive upon the Legislative Branch (Pet. 8, 21). These contentions are equally applicable when the Executive objects to entire items of an appropriation—a power which, under petitioners' own construction of Section 34, the Governor of Puerto Rico admittedly has. In addition, at least two states have adopted constitutional provisions specifically authorizing the Governor to reduce the items in an appropriation bill (Cal. Const. Art. IV, § 34; Mass. Const. Amend. LXIII, § 5), and the highest courts of two other states have held that the Governor had such authority notwithstanding the absence of specific constitutional grant. *State* v. *Forsyth,* 21 Wyo. 359; *Commonwealth* v. *Barnett,* 199 Pa. 161. It is clear, therefore, that the authority in the Executive to reduce items of an appropriation bill does not violate any basic principles of American constitutional law. On the contrary, such practice may be thought to serve a very salutary purpose, for as a result the Governor "is not forced to choose between vetoing

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which happened to be put into an appropriation bill. The Court went on to state (299 U. S. at 415):

> * * * Provisions granting power to the executive to veto an item or items of an appropriation bill are to be found, in various forms of expression, in many of the state constitutions. Their object is to safeguard the public treasury against the pernicious effect of what is called "log-rolling"—by which, in order to secure the requisite majority to carry necessary and proper items of appropriation, unnecessary or even indefensible items are sometimes included.

an item of appropriation for a meritorious purpose, or approving it for an excessive amount. Without entirely rejecting it, he may reduce the amount provided for to a sum in accord with his own view as to the need for the expenditure." *Wood* v. *Riley,* 192 Cal. 293, 299; see, also, *Bengzon* v. *Secretary of Justice,* 299 U. S. 410, 415.[5]

2. The court below properly refused to set aside the conclusion of the two Puerto Rican courts that this suit must fail for the further reason that it was barred by laches, which, contrary to petitioners (Pet. 22-25), is clearly a question of local law (*Abraham* v. *Ordway,* 158 U. S. 416; *Wheeling Bridge & Terminal Ry.* v. *Reymann Brewing Co.,* 90 Fed. 189 (C. A. 4); cf. *Great Western Telegraph Co.* v. *Purdy,* 162 U. S. 329). Not only have petitioners failed to show that this ruling is "inescapably wrong" or "patently erroneous" (Rule 39(b) of the Court of Appeals for the First Circuit; *Sancho Bonet* v. *Texas Co.,* 308 U. S. 463, 471; *De Castro* v. *Board of Commissioners,* 322 U. S. 451), but we believe it to be easily demonstrable that the holding was entirely sound.

Petitioners do not claim that their application for a writ of mandamus was seasonably filed de-

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[5] On July 3, 1950, the President approved Pub. Law No. 600, 81st Cong., an Act "to provide for the organization of a constitutional government by the people of Puerto Rico", which enables Puerto Rico to adopt a constitution in substitution for the present Organic Act. The Act of July 3 provides that, upon the going into effect of the new constitution, Section 34 of the Organic Act shall be repealed.

spite the 15-year interval between the filing and respondents' alleged default or neglect of duty (*United States ex rel. Arant* v. *Lane,* 249 U. S. 367; *City of Paducah* v. *Gillispie,* 273 Ky. 101; *Buell* v. *Jefferson County Court,* 175 Or. 402), nor do they attempt any longer to discharge the burden of proving a valid excuse for their failure to make a timely application for enforcement of their alleged rights (*Folmar* v. *Brantley,* 238 Ala. 681; *United States ex rel. Arant* v. *Lane, supra*).[6] Instead, they attack the conclusion of the Puerto Rican courts solely on the ground that respondents were not prejudiced by their delay (Pet. 25-27). But it is clear that prejudice has in fact resulted from such delay. As the Puerto Rican District Court pointed out (R. 24):

> This inactivity of the plaintiffs is entirely inexcusable. If they had been right as to their main argument in the case, the delay in filing the complaint would have been very preju-

[6] In their brief below, petitioners offered what they characterized as "fairly good" (Appellants' Br. 26) reason for their delay, namely, that after the *De la Rosa* case, no Puerto Rican attorney would handle a claim of a governmental employee whose salary had been reduced, since such a claim was considered a waste of time and effort (Appellants' Br. 26). Petitioners' attorney likewise apparently thought for a long time that the claim was without foundation "until recently, about three years ago, when I decided to study the case deeply in order to see if he had a just and reasonable cause of action" (Appellants' Br. 26). Such reason for delay, without any intervening changes of circumstances except the continued affirmance of the *De la Rosa* case by the Supreme Court of Puerto Rico and the statement by the Court of Appeals for the First Circuit in the *Leon* case (*supra,* p. 7), hardly constitutes a valid justification.

> dicial to the interests of the People of Puerto Rico and to the fulfillment of the duties of the defendants, because the Governor of Puerto Rico has continued, after 1932, effecting in the budget bill, deductions on the salaries of officers and employees of the Government, thus accumulating a big sum of money that would have to be paid from the treasury of Puerto Rico, all because of the indolence, inactivity and inexcusable delay on the part of the plaintiffs. Attitudes like the one adopted by the plaintiffs can not be protected by the courts of justice. Considering all the circumstances concurring in the present case, the doctrine of "laches" is entirely applicable. * * *

Since the Governor has reduced governmental salaries in many instances since 1932, it is very probable, were petitioners correct, that the Puerto Rican government would be deluged at one time by a tremendous backlog of claims. Clearly, this would cause great hardship to the government and taxpayers of Puerto Rico. Cf. *People* v. *Chicago Park District,* 296 Ill. App. 365, certiorari denied, 308 U. S. 575; *State* v. *Witter,* 114 Ohio St. 357.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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JULY, 1950.

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